

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Competitive Product Prices  
Bilateral Agreement Between United States  
Postal Service and Posten Norge AS (MC2011-34)  
Negotiated Service Agreement

Docket No. CP2012-60

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE  
NOTICE OF FILING AN ADDITIONAL INBOUND COMPETITIVE  
MULTI-SERVICE AGREEMENTS WITH FOREIGN POSTAL OPERATORS 1  
NEGOTIATED SERVICE AGREEMENT (NORWAY POST)

(September 24, 2012)

The Public Representative hereby provides comments pursuant to Order No. 1471.<sup>1</sup> In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Notice of the modification of a bilateral agreement for inbound competitive services with Posten Norge AS (Norway Post).<sup>2</sup> The modification extends the Norway Post Agreement for an additional eighteen months, from October 1, 2012 to March 31, 2014. Notice, Attachment 3A.

The bilateral agreement with Norway Post (Norway Post Agreement), establishing a rate for delivery of inbound Air Parcel Post (Air CP) in the United States, was initially filed in Docket No. CP2011-69.<sup>3</sup> In Order No. 840, the Commission included the Norway Post Agreement in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.<sup>4</sup> Previously, in Order No. 546,

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<sup>1</sup> PRC Order No. 1471, Notice and Order Concerning Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement (Norway Post Agreement), September 17, 2012.

<sup>2</sup> Notice of the United States Postal Service of Filing Additional Functionally Equivalent Agreement, September 13, 2012 (Notice), at 1.

<sup>3</sup> See Notice of the United States Postal Service of Filing Additional Functionally Equivalent Agreement, Docket No. CP2011-69, August 18, 2011.

<sup>4</sup> PRC Order No. 840, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-69, September 7,

the Commission approved the addition of the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product to the competitive product list, and included within that product an agreement with Koninklijke TNT Post BV and TNT Post PakketSERVICE Benelux BV (Post NL (Netherlands) Agreement),<sup>5</sup> which serves as the baseline agreement.<sup>6</sup> With respect to another competitive product, Global Expedited Package Services (GEPS) contracts, the Commission determined that additional agreements may be included within a product if such agreements meet the requirements of 39 U.S.C. § 3633 and they are functionally equivalent to the previously submitted baseline agreement for the product.<sup>7</sup>

## COMMENTS

The Public Representative has reviewed the Norway Post Agreement and the modification of that agreement accompanying the Postal Service's Notice. The Public Representative has also reviewed the supporting financial model filed under seal that accompanied the Postal Service's Notice. Based upon that review, the Public Representative concludes that the Norway Post Agreement is functionally equivalent to the baseline agreement. However, the Agreement may not be financially remunerative to the Postal Service. Although the financial model shows a positive cost coverage, it may not be sufficient in the event the Postal Service's estimates of revenue and cost are more optimistic than actual financial results.

*Functional Equivalence.* In its Notice, the Postal Service asserts that the Norway Post Agreement as modified is "functionally equivalent to the [baseline] agreement filed in Docket No. CP2010-95."<sup>8</sup> The Public Representative agrees. As indicated above, in Order No. 840 the Commission determined that the Norway Post Agreement as initially

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2011.

<sup>5</sup> During FY 2011, the statutory name, TNT N.V., was changed to Post NL N.V. Response of the United States Postal Service to Chairman's Information Request No. 4, Docket No. ACR2011, Question 5.

<sup>6</sup> See PRC Order No. 546, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, Docket Nos. MC2010-34 and CP2010-95, September 29, 2010.

<sup>7</sup> See PRC Order No. 86, Order Concerning Global Expedited Package Services Contracts, Docket No. CP2008-5, July 23, 2008.

<sup>8</sup> Compare Notice at 3-4, and Notice of United States Postal Service of Filing Additional Functionally Equivalent Agreement, Docket No CP2011-69, August 18, 2011 (Initial Notice), at 3-4.

filed in Docket No. CP2011-69 should be included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. The modification simply extends the Norway Post Agreement for an additional 18 months. There are no other changes to the Agreement. According to the modification, “All other terms and conditions of the Agreement shall remain in force.” Notice, Attachment 3A. Given that the Norway Post Agreement as modified is identical in every respect, other than the 18 month extension, to the Norway Post Agreement previously reviewed by the Commission, the modified Norway Post Agreement is functionally equivalent to the baseline agreement.

*Requirements of 39 U.S.C. § 3633.* Pursuant to 39 U.S.C. § 3633(a), the Postal Service must demonstrate that the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product covers attributable costs, which precludes the subsidization of competitive products by market dominant products and thereby makes an appropriate contribution to the institutional costs of the Postal Service. In this proceeding, the Postal Service’s financial model does not demonstrate that the addition of the modified Norway Post Agreement results in the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product covering costs as required by 39 U.S.C. § 3633. However, the Postal Service’s financial model indicates that the negotiated rate for inbound Air Parcel Post set forth in the modified Norway Post Agreement will generate a positive contribution, and therefore will not degrade the cost coverage of the product

That said, by extending the Norway Post Agreement for an additional 18 months, including the existing Inbound Air Parcel Post rate, the estimated cost coverage appears optimistic given the expected continuing rise in postal costs. The estimated cost coverage depends heavily upon the reliability of the Postal Service’s estimates of revenue and cost, and there is little margin for error. A relatively small error in estimation could result in higher costs or lower revenues. The possibility of unfavorable exchange rates and misestimates of cost suggest that the Postal Service’s revenue and cost estimates are unlikely to be realized in the actual financial results.

While the requirements of the 39 U.S.C. § 3633 apply to competitive products, not individual contracts, section 3633(a)(1) prohibits the subsidization of competitive products by market dominant products. As a result, the Public Representative questions whether the Postal Service should be entering into a contract such as the Norway Post Agreement in which actual revenues are unlikely to cover costs during the period of the extension.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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